

REMARKS

The above-identified application has been carefully reviewed in light of the Examiner's communication mailed November 26, 2003.

Independent claims 1, 18 and 26 have been amended to make clear that the core layer is substantially completely circumscribed by the outer layer and the inner layer is substantially completely circumscribed by the core layer. Claims 7, 21 and 30 have been amended to be consistent with the amendments to these independent claims. Claims 32 and 33, which had previously been withdrawn from consideration as being drawn to a non-elected invention, have been canceled, without prejudice. Applicant expressly reserves the right to seek patent protection for these and/or similar claims in one or more later filed related applications.

Applicant gratefully acknowledges the Examiner's holding that claims 12, 14, 22, 31 and 36 to 42 include allowable subject matter. As suggested by the Examiner, applicant has rewritten many of these claims in independent form. Thus, new claims 43, 44, 46, 48, 49, 50, 51, 52 and 53 present the subject matter of previous claims 12, 14, 37, 22, 31, 39, 40, 41 and 41, respectively, in independent form. Allowable claims 36 and 38 have been rewritten as claims 45 and 47, respectively, which are dependent on new claims 44 and 46, respectively.

Each of these amendments and new claims is fully supported by the present specification, for example, the drawings and the detailed description.

In view of the above, applicant submits that new claims 43 to 53 include allowable subject matter and are, therefore, allowed.

Claims 1 to 4, 7, 8, 10, 11, 13, 16, 18, 19, 21 and 23 to 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino et al in view of Godavarti et al. Claims 6, 9, 15 and 34 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino et al in view of Godavarti et al and further in view

of Sandt. Claims 26, 27 and 30 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino et al in view of Godavarti et al and as evidenced by Robbins, III. Claims 29 and 35 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino et al in view of Godavarti et al and, as evidenced by Robbins, III, further in view of Sandt. Applicant traverses each of these rejections as it pertains to the present claims 1 to 4, 6 to 16, 18, 19, 21 to 27, 29 to 31, and 34 to 42, as amended.

Claims 6, 9, 15 and 34 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino in view of Godavarti et al. Claims 6, 9, 15 and 34 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino in view of Godavarti et al and further in view of Sandt. Claims 26, 27 and 30 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino in view of Godavarti et al and, as evidenced by Robbins, III. Claims 29 and 35 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino in view of Godavarti et al and, as evidenced by Robbins, III, further in view of Sandt. Applicant traverses each of these rejections as it pertains to the present claims 1 to 4, 6 to 16, 18, 19, 21 to 27, 29 to 31, and 34 to 42, as amended.

In independent claim 1, a coextruded composite is provided comprising an outer layer comprising a first polymeric material; a core layer substantially completely circumscribed by the outer layer and comprising a second, thermoplastic polymeric material; and an inner layer substantially completely circumscribed by the core layer and comprising a third polymeric material. The inner layer defines a hollow space extending along the entire length of the composite.

In independent claim 18, a composite component is provided comprising a weatherable outer layer comprising a first polymeric material; a core layer substantially completely circumscribed by

the outer layer and comprising a wood filled thermoplastic second polymeric material; and an inner layer substantially completely circumscribed by the core layer and comprising a thermoplastic third polymeric material. The inner layer defines a hollow space extending along the entire length of the composite component. The composite component is a fence component or a decking component. Further, the composite component is coextruded and a cross-sectional area perpendicular to the length which is substantially uniform in size and shape along the entire length of the composite component.

In independent claim 26, a fencing system is provided and comprises a plurality of fence posts; and a plurality of fence rails fastened to the plurality of fence posts so as to form a fence. Each of the fence posts and fence rails comprises a weatherable outer layer comprising a first polymeric material; a core layer substantially completely circumscribed by the outer layer and comprising a wood-filled thermoplastic second polymeric material; and an inner layer substantially completely circumscribed by the core layer and comprising a thermoplastic third polymeric material such that the inner layer defines a hollow space. Each of the fence posts and rails is a coextruded composite having cross-sectional area perpendicular to the composite's length which is substantially uniform in size and shape along the entire length. The hollow space extends along the entire length of the composite.

Meglino et al discloses fence inserts for chain link fences and assemblies comprising a chain link fence and a plurality of fence inserts having an inner core and an outer layer made of a material which is different from the inner core. Thus, Meglino et al discloses two layer composites. Meglino et al discloses that the two layer composites can be augmented with wings, such as 354 and 355 in Fig. 6, made of a different material.

Meglino et al does not disclose, teach or suggest the present

invention. For example, Meglino et al does not disclose, teach or even suggest a composite, composite component or fence rail comprising an outer layer, preferably a weatherable outer layer; a core layer substantially completely circumscribed by the outer layer; and an inner layer substantially completely circumscribed by the core layer, as recited in the presently rejected claims. Meglino et al discloses two layer composites which can be augmented by wings which do not substantially completely circumscribe either the outer layer or the inner core of the two layer composite. In short, Meglino et al is directed to a substantially different structure than the structures recited in the presently rejected claims.

Godavarti et al discloses a composite made of a polypropylene polymer and wood fiber. Godavarti et al discloses that a capstock is extruded to cover only a portion of the profile. See column 15, lines 31 to 33 and the drawings.

Godavarti et al does not disclose, teach or suggest the present invention. For example, Godavarti et al, like Meglino et al, does not disclose, teach or even suggest a composite, composite component or fence rail comprising an outer layer, preferably a weatherable outer layer; a core layer substantially completely circumscribed by the outer layer; and an inner layer substantially completely circumscribed by the core layer, as recited in the presently rejected claims. Godavarti et al makes clear that only a portion of the composite is covered by the cap stock or outer layer and, thus, actually teaches away from the present invention.

In view of the substantial, and relatively similar, deficiencies of both Meglino et al and Godavarti et al with respect to the present claims, applicant submits that the present claims, and in particular claims 1 to 4, 7, 8, 10, 11, 13, 16, 18, 19, 21, 23 to 25 and 26, are unobvious from and patentable over Meglino et al in view of Godavarti et al under 35 U.S.C. 103(a).

With regard to claims 6, 9, 15 and 34, the Examiner relies on Sandt to supply the deficiencies apparent in Meglino et al and Godavarti et al.

Sandt discloses tapered, load bearing structural elements, such as poles or beams which may be buried in the ground or otherwise supported in a fixed manner. Sandt discloses that the central core is a reactive resin such as an amine-formaldehyde resin. As discussed in a previous response, when considered as a whole, Sandt makes clear that the "reactive resin" is a thermosetting material, and is not a thermoplastic material. Sandt discloses that the hollow structural member is made using separately pre-formed inner and outer sleeves of polyvinyl chloride. Such pre-formed sleeves are aligned to move the sleeves with respect to each other, as by pulling the inner sleeve into the outer sleeve, while gravity filling the space between those sleeves with the reactive resin in liquid form. Fibers or filaments in the liquid reactive resin are pulled into the space between the sleeves so as to extend through the length of the poles or beams. Sandt discloses that the reactive resin is used as a liquid and sets to a hard solid and includes materials such as polyesters, epoxy, phenolic or urea resins which solidify from a liquid form to a hard insoluble final product using heat to accelerate the hardening or setting of the resin.

Sandt does not disclose, teach or suggest the present invention. For example, Sandt does not disclose, teach or even suggest any layered composite including a middle or core layer comprising a thermoplastic polymeric material, as recited in the present claims. To the contrary, as noted above, Sandt discloses composites including only core-layers made up of thermosetting materials and does not even suggest composites including core layers of thermoplastic materials. Thus, Sandt teaches clearly directly and expressly away from the present invention involving

composites having core layers comprising thermoplastic materials.

Further, Sandt does not disclose, teach or even suggest a coextruded composite, as recited in the present claims. The fact that Sandt teaches a composite including separately pre-formed sleeves between which is separately placed a thermosetting material clearly teaches away from the coextruded composites recited in the present claims. In addition, the fact that Sandt teaches a pole having a rectangular cross-section or the fact that Sandt teaches a composite having an outer layer and an inner layer made of polyvinylchloride does not supply the deficiencies apparent in Meglino et al and Godavarti et al.

The composites of Meglino et al and Godavarti et al and the composite of Sandt are so different and distinct, one from the other, that these references provide no motivation or incentive to one of ordinary skill in the art to combine their teachings for any purpose, let alone for the purpose of making obvious the present invention.

In view of the above, applicant submits that the present claims, and in particular claims 6, 9, 15 and 34, are unobvious from and patentable over Meglino et al in view of Godavarti et al and further in view of Sandt under 35 U.S.C. 103(a).

With regard to claims 26, 27 and 30, the Examiner contends that Robbins, III supplies the deficiencies apparent in the teachings of Meglino et al in view of Godavarti et al.

The fact that Robbins, III teaches a plurality of fence parts and fence rails being connected to each other does not supply the deficiencies apparent in Meglino et al and Godavarti et al, as discussed above. To a large extent, Robbins, III has similar deficiencies with regard to the present claims.

Therefore, applicant submits that the present claims, and in particular claims 26, 27 and 30, are unobvious from and patentable over Meglino et al in view of Godavarti et al as evidenced by

Appl. No. 09/761,331  
Response E

Robbins, III under 35 U.S.C. 103(a).

For substantially the same reasons as discussed previously with regard to earlier rejections citing Sandt and Robbins, III, applicant submits that the present claims, and in particular claims 29 and 35, are unobvious from and patentable over Meglino et al in view of Godavarti et al and as evidenced by Robbins, III, further in view of Sandt under 35 U.S.C. 103(a).

In conclusion, application has shown that the present claims are allowed or allowable or are unobvious from and patentable over the prior art under 35 U.S.C. 103(a). Therefore, applicant submits that claims 1 to 4, 6 to 16, 18, 19, 21 to 27, 29 to 31 and 34 to 53 are allowed or allowable, and respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Respectfully submitted,



Frank J. Uxa  
Attorney for Applicant  
Reg. No. 25,612  
4 Venture, Suite 300  
Irvine, CA 92618  
(949) 450-1750  
Facsimile (949) 450-1764

FJUxa/ac